

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

MUSCATINE USED PARTS, INC.;

Muscatine County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2011-SW-15

NO. 2011-WW-07

NO. 2011-AQ-13

**TO: Lyle Winter
Muscatine Used Auto Parts, Inc.
2407 Industrial Connector
Muscatine, IA 52761**

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Muscatine Used Parts, Inc. for the purpose of resolving issues related to the storage and handling of discarded appliances, illegal open burning of solid wastes, and stormwater permitting violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Kurt Levetzow, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison St.
Washington, IA 52353
Phone: 319-653-2135

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319
Phone: 515-281-8889

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code sections 455B 134(9) and 455B 138(1) which authorize the Director to issue any order necessary to secure compliance

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Muscatine Used Parts, Inc.**

with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B 307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code section 455B 175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 (water quality), and the rules adopted pursuant to that part; and Iowa Code section 455B 109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties

III. STATEMENT OF FACTS

1 Muscatine Used Parts, Inc. owns and operates a scrap metal salvage facility in Muscatine, Iowa. Lyle Winter is the President and principal owner of Muscatine Used Parts, Inc. The facility is covered by DNR General Permit #1 -- ID #0824-14789.

2 Administrative Order Nos 2003-WW-14 & 2003-SW-10 were issued to Muscatine Used Parts, Inc. on May 23, 2003. Muscatine Used Parts, Inc. was required to:

- Obtain a storm water permit;
- Reduce the number of waste tires stored onsite;
- Cease the demanufacturing of appliances;
- Remove all discarded appliances from the site;
- Properly dispose of any hazardous materials; and
- Pay an administrative penalty

3 On September 12, 2003, the DNR indicated to Muscatine Used Parts, Inc. that compliance with the administrative order had been achieved. However, a storm water permit was never obtained by Muscatine Used Parts, Inc. The compliance determination was made in regard to the onsite conditions.

4 On November 29, 2007, the DNR received a complaint alleging that Muscatine Used Parts, Inc. was illegally burning scrap wire to recover the metal. The complaint was referred to the Muscatine Fire Department.

5 On November 29, 2007, the DNR notified Muscatine Used Parts, Inc. that a storm water discharge permit was required for the facility and that the application must be accompanied by \$750 in current and prior permit fees.

6 On November 1, 2007, the Muscatine Fire Department confirmed that the illegal burning of scrap wire had taken place at the property.

7 On November 9, 2007, the DNR conducted an investigation at the Muscatine Used Parts, Inc. facility. The DNR documented the apparent recent illegal burning of trade waste in an iron bin on the property. Lyle Winter acknowledged that burning had occurred but

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Muscatine Used Parts, Inc.**

denied that scrap wire was burned. A letter was sent by the DNR to Muscatine Used Parts, Inc. on November 13, 2007 documenting the investigation and requiring Muscatine Used Parts, Inc. to complete the following by November 29, 2007:

1. dispose of the waste in the bin and provide documentation of disposal to Field Office #6;
2. adopt a written procedure addressing the application, and ultimate removal, of the oil absorbing material used at the outdoor processing station for draining automobiles; or
3. provide a certification by an independent professional that certifies that the geographical landscape does not allow the release of a stormwater discharge of rains greater than 1.25".

8. On December 7, 2007, the DNR sent a follow-up letter to Muscatine Used Parts, Inc. due to the company's failure to comply with the deadline established in the letter of November 9, 2007.

9. On January 4, 2008, the DNR sent a follow-up letter to Muscatine Used Parts, Inc. due to the continued failure to comply with the deadline established in the letter of November 9, 2007.

10. On January 8, 2008, Muscatine Used Parts, Inc. submitted a written plan for managing waste fluids at the site. On January 11, 2008, Muscatine Used Parts, Inc. obtained storm water permit discharge authorization. Coverage is valid through October 1, 2010.

11. On November 12, 2008, the DNR received a complaint alleging illegal open burning by Muscatine Used Parts, Inc. and further alleging the illegal handling, processing, and storage of discarded appliances. The complaint was investigated on November 18, 2008. A small lumber fire was being used by workers for warmth. Approximately 5-7 appliances were observed onsite (window air conditioners). There appeared to be more than the allowable 500 waste tires stored onsite. A letter was sent to Muscatine Used Parts, Inc. on November 21, 2008 documenting the findings of the inspection. The letter again informed Muscatine Used Parts, Inc. that the facility is not authorized to accept or process discarded appliances.

12. On April 6, 2009, the DNR conducted a follow-up investigation at the facility. The waste tires on the property had been cut into 18" strips for landfilling. Approximately 8 discarded appliances were observed. A letter was sent to Muscatine Used Parts, Inc. on April 10, 2009 notifying the company that it is not allowed to accept any discarded appliances.

13. On April 20, 2009, a truck was observed delivering discarded appliances to Muscatine Used Parts, Inc. The appliances were unloaded at the site. During this visit, a grapple hook was observed to be used to move appliances. On May 6, 2009, DNR sent a letter to Muscatine Used Parts, Inc. notifying the company that no method of handling of

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Muscatine Used Parts, Inc.**

discarded appliances may be used which damages, cuts or breaks refrigerant lines or crushes compressors, capacitors, or mercury-containing components

14. On September 15, 2009, a complaint was received alleging that Muscatine Used Parts, Inc. was loading unprocessed appliances onto trucks with a grappling hook and smashing the appliances in violation of the safe handling requirements. It was further alleged that neither mercury-containing components nor refrigerants are removed from automobiles prior to crushing or processing. The complaint was investigated on September 18, 2009. On that date, Muscatine Used Parts, Inc. was observed to be dropping unprocessed appliances into semitrailers. Appliance storage containers were also observed. The DNR documented evidence of the breakage and mishandling of discarded appliances that had not been processed to remove capacitors, mercury-containing components or refrigerants. At this time the automobile fluid drainage rack was also observed. Contrary to the site's pollution prevention plan, the rack was not placed on a concrete slab. Muscatine Used Parts, Inc. could not locate any refrigerant recovery device and it was not located in the area intended for refrigerant removal. The mercury switch storage bucket could not be immediately located and was eventually located in a shed on the southwest corner of the property. The bucket was filled with sheet metal screws. Under the screws were approximately 200 mercury switches. Based upon the location and contents of the bucket, it appeared that mercury switches had not been removed from vehicles or appliances for a significant period of time. A Notice of Violation was issued on September 29, 2009.

15. In 2010, Muscatine Used Parts, Inc. instituted procedures to prevent the reoccurrence of the violations documented in this Order. New procedures include but are not limited to the placement of the mercury switch recycling container in the dismantling area of the facility, placing auto dismantling under the direct supervision of Justin Winter, and the creation of a mercury switch removal log.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. Iowa Code section 455D.6(6) requires the Director of the DNR to develop a strategy and recommend to the Commission the adoption of rules necessary to implement strategy for white goods.

2. In order to carry out the purposes of Iowa Code sections 455B.304 and 455D.6(6), the Commission has adopted IAC Chapter 567-118 "Discarded Appliance Demanufacturing". The requirements applicable to a permit holder are set forth in IAC Chapter 567-118. Rule 118.2(2) provides that a person must obtain an appliance demanufacturing permit from the DNR before conducting any demanufacturing activities.

3. 567 IAC 118.2(1) prohibits any person from conducting demanufacturing of appliances until an appliance demanufacturing permit (ADP) has been obtained from the

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Muscatine Used Parts, Inc.**

DNR, subject to the exceptions of 567 IAC 118.2(2). The above facts demonstrate non-compliance with this provision.

4. 567 IAC 118.2(3) requires that any person engaged in demanufacturing appliances must be in compliance with all federal and state laws relating to the management and disposition of all hazardous wastes, hazardous materials and refrigerants. The above facts demonstrate non-compliance with this provision.

5. Pursuant to 567 IAC 118.4(1), any person collecting and storing discarded appliances must store the appliances so as to prevent electrical capacitors, refrigerant lines and compressors, and mercury-containing components from being damaged and allowing a release into the environment. The above-stated facts disclose violations of this provision.

6. Pursuant to 567 IAC 118.4(2), no method of handling discarded appliances may be used which in any way damages, cuts or breaks refrigerant lines or crushes compressors, capacitors, or mercury-containing components that may cause a release of refrigerant, PCBs or mercury into the environment. The above-stated facts disclose violations of this provision.

7. 40 CFR 82.162 adopted by reference by DNR at 567 IAC 118.9, requires that all persons disposing of appliances must certify to the EPA that they have acquired certified recovery or recycling equipment and are complying with applicable operating requirements. The above facts demonstrate non-compliance with this provision.

8. Iowa Code section 455B.133 provides that the Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

9. 567 IAC 23.2 states that no person shall allow, cause, or permit open burning of combustible materials except as provided in subrules 567 IAC 23.2(2) (variances) and 567 IAC 23.2(3) (exemptions). The burning documented in this matter does not fall under 567 IAC 23.2(2) exemptions and the burning of trade wastes is specifically prohibited. The above facts demonstrate a violation of this provision.

10. Iowa Code section 455B.173(3) authorizes the Commission to adopt rules relating to the operation of and issuance of permits to waste disposal systems. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Commission has adopted federal regulations pertaining to the issuance of National Pollutant Discharge Elimination System (NPDES) permits for storm water discharge, at 567 IAC 60.2 and 64.3 through 64.16. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Number 6 under this definition includes "Facilities involved in the recycling of materials, including metal scrap yards, battery

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Muscatine Used Parts, Inc.**

reclaimers, salvage yards, and automobile junkyards, including, but not limited to, those classified as Standard Industrial Classifications 5015 and 5093 "

11 Subrule 64.4(2) provides that the Director may issue general permits which are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(1) adopts Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No. 1. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by the DNR to the contrary. Subrule 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. The above-stated facts disclose a violation of these provisions.

12. General Permit No. 1, Part IV, provides that the permittee must develop and implement a "pollution prevention plan" in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the plan. Plans must be updated to address changes in a facility's design and operation, and must be modified to address deficiencies noted by the DNR. The above-stated facts disclose a violation of these provisions.

V. ORDER

HEREFORE, the DNR orders and Muscatine Used Parts, Inc. agrees to do the following:

1. Muscatine Used Parts, Inc. shall pay a penalty of \$5,000 within 30 days of the Director's signing of this administrative consent order;
2. By June 15, 2010, Muscatine Used Parts, Inc. shall remove and properly dispose of all discarded appliances on the property and document such proper disposal;
3. Muscatine Used Parts, Inc. shall create and maintain a system for tracking the removal and proper disposal or recycling of all waste oil, antifreeze, and refrigerants from each and every automobile accepted at the facility. The tracking system shall be maintained for a period of five years from the date of this administrative consent order;
4. Muscatine Used Parts, Inc. shall conduct all fluid removal from automobiles on an impervious surface; and

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Muscatine Used Parts, Inc**

5. Muscatine Used Parts, Inc. shall not intentionally accept discarded appliances for demanufacturing. It is understood by the parties that discarded appliances are sometimes contained within scrap metal loads delivered to the facility and have been dumped on the property in the past.

6. Muscatine Used Parts, Inc. shall not have more than 12 discarded appliances on site at any time. Such appliances shall be stored in compliance with IAC Chapter 567-118. Muscatine Used Parts, Inc. shall pay a stipulated penalty in the amount of \$100 for each appliance in excess of 12 appliances observed by the DNR to be on the facility property at any time after July 1, 2011.

VI. PENALTY

1. Iowa Code section 455B 146 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B 191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the stormwater violations involved in this matter. Iowa Code section 455B 307(3) authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B 109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$5,000. The administrative penalty is determined as follows:

I. Economic Benefit. Muscatine Used Parts, Inc. has achieved an economic benefit by failing to comply with discarded appliance demanufacturing requirements and the failure to comply with stormwater permitting requirements. Costs avoided include hazardous waste disposal costs and labor costs. Economic benefits were achieved through the sale of discarded appliances for scrap metal. Based upon these considerations, \$2,000 is assessed for this factor.

II. Gravity of the Violations. Failure to properly dispose of solid waste threatens the integrity of the solid waste program. Tax dollars were expended to investigate, document and respond to this violation. Improper solid waste disposal can degrade property and contaminate land, water and air resources. Discarded appliances contain hazardous wastes including PCBs, mercury, and refrigerants. The improper handling, storage, and disposal of discarded appliances threaten the release of hazardous wastes into the atmosphere. The

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Muscatine Used Parts, Inc.**

improper handling of waste fluids from automobiles threatens to contaminate the groundwater and surface water of the State. The DNR has documented that improper disposal of solid waste material had been taking place for many years. Therefore, a penalty of \$1,500 is assessed.

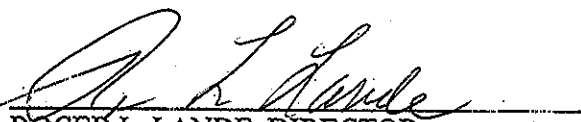
III. Culpability. Muscatine Used Parts, Inc. has received a previous administrative order related to the improper handling of discarded appliances. Muscatine Used Parts, Inc. has been repeatedly informed of the regulations applicable to the proper handling of discarded appliances and the waste fluids from automobiles. In light of the prior administrative order and the continuing violations, \$1,500 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of Muscatine Used Parts, Inc. By signature to this administrative consent order, all rights to appeal this administrative consent order are waived.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146, 455B.175, and 455B.307. Compliance with sections V.1 through V.4 of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to issue an administrative order or to refer to the attorney general in lieu of collecting stipulated penalties pursuant to this administrative consent order.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 5th day of
May, 2011.



LYLE WINTER
MUSCATINE USED PARTS, INC.

Dated this 24 day of
April, 2011.

Field Office 6; Kurt Levetzow; IC (7)(b), VIC, VII C.(1)